IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA.

RSA. NO. 338 OF 1995.

Judgment Reserved on: 20.4.2007

Date of Decision: 7.5.2007

Devi Chand **…….Appellant**

Versus

State of H.P. **……** **Respondent.**

Coram

The Hon'ble Mr. Justice Kuldip Singh,Judge

Whether approved for reporting? No.

For the appellant: ***Mr. G.D. Verma, Sr. Advocate with***
Mr. Romesh Verma, Advocate.

For the respondent; Mr. M.L. Chauhan, Addl. Advocate General.

Kuldip Singh, J

The plaintiff is in appeal against judgment, decree dated 7.6.1995 passed by learned District Judge, Shimla in C.A. No.26-S/13 of 1994, dismissing the appeal of the appellant against judgment, decree dated 21.12.1993 passed by learned Senior Sub Judge, Kinnaur. The parties in this judgment are referred in the same manner as referred in the trial Court.

The brief facts of the case are that the plaintiff filed a suit for declaration that he is owner in possession of Khasra No,466/1 and 474/1 measuring 0-06-75 hecs. situated in Up Mohal Lippa, Tehsil Moorang, Distt Kinnaur, H.P. with consequential relief restraining the defendant from interfering in possession of the suit land. The case of the plaintiff-appellant is that he is in possession of the suit land as owner for the last more than

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W*hether reporters of Local Papers may be allowed to see the Judgment?*

100 years. The plaintiff has raised an almonds orchard on Khasra No.474/1 and has constructed a house on Khasra No.466/1. It is also the case of the plaintiff that order dated 19.7.1988 passed by Assistant Collector, Moorang for his eviction from Khasra No.466/1, 474/1 and the order dated 19.12.1988 passed by Additional Deputy Commissioner, Pooh are without jurisdiction and illegal. The plaintiff has become owner of the suit land by way of adverse possession.

The defendant filed written statement, in which, objection of maintainability of suit for want of notice under Section 80 C.P.C. has been taken. The Court has no jurisdiction under Section 171 of the H.P. Land Revenue Act. The suit has not been properly valued for the purpose of court fee and jurisdiction . It is also the case of the defendant that Khasra No.474/1 and 466/1 are coming in ownership of the State of H.P. and in possession of Bashind-Gan-Deh. The plaintiff has encroached upon the suit land in December, 1987. It has been submitted that orders passed by Assistant Collector, Moorang and Additional Deputy Commissioner, Pooh are legal.

The learned Trial Court dismissed the suit on 21.12.1993 against which plaintiff filed an appeal which has been dismissed by learned District Judge, Shimla on 7.6.1995. In this way, the plaintiff has come in second appeal which has been admitted for hearing on 30.8.1996, on the following substantial questions. of law:-

1. *Whether there has been mis-reading and mis-appreciation of the pleadings of the parties and evidence on record ?*
2. *Whether appellant has acquired ownership rights, over suit land by way of adverse possession?*
3. *Whether for want of filing appeal by the Respondent, findings on issue No.2 whereby ejectment orders*

have been declared null and void is without jurisdiction ?

I have heard the learned counsel for the parties and have also gone through the record.

Substantial Questions of law No.1 and 2:-

The two Courts below have concurrently held that plaintiff has not acquired adverse possession on the suit land. This is a finding of fact. The finding recorded on the plea of adverse possession by two Courts below is a pure finding of fact which involves no substantial question of law. The learned counsel for the plaintiff-appellant has failed to point out what material evidence has not been considered by the two Courts below and how the decisions rendered by two Courts below are based upon mis-reading, mis-appreciation of the evidence and the pleadings. These points have been raised generally without pointing out anything from record. The learned counsel for the plaintiff-appellant has failed to make out any case for interference. The findings recorded by two Courts below against the plaintiff regarding his plea of adverse possession on the suit land is confirmed and accordingly, both these substantial questions of law are decided against the plaintiff-appellant.

Substantial question of law, 3:

The learned counsel for the plaintiff-appellant has submitted that the trial Court has decided issue No.2 against the defendant regarding the validity of orders passed by Assistant Collector Ist Grade, Moorang and Additional Deputy Commissioner, Pooh but defendant has not assailed these findings by way of appeal and the learned District Judge has erred in reversing these finding in first appeal. The suit filed by the plaintiff was dismissed by the trial Court. No appeal lies against the findings. However, in first appeal the defendant could very well while supporting the

decree make out a case that findings recorded by trial Court on issue No.2 are wrong and illegal. The First Appellate Court accepted the contention of the defendant in first appeal and reversed the findings of trial Court on issue No.2. It is not the case of the plaintiff that findings recorded by First Appellate Court on issue No.2 are otherwise wrong. The First Appellate Court had the jurisdiction to reverse findings on issue No.2 decided by trial Court. There is no error of jurisdiction in the decision of First Appellate Court. The substantial question of law No.3 is thus decided against the appellant-plaintiff.

No other point was urged.

In view of above discussion, the appeal is dismissed. Impugned judgment and decree are confirmed with costs.

(Kuldip Singh)
Judge

May 7, 2007
(sks)